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[Third Party Communication:

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**From:** [REDACTED]

**Sent:** Tuesday, April 12, 2022 8:30:36 PM

**To:** [REDACTED]

**Cc:** [REDACTED]

**Bcc:**

**Subject:** FW: Disclosure Question

Andrea,

As mentioned, OPR's Director asked me to respond to your two questions:

1. Are Notices of Deficiency considered as part of the notices/correspondence that can be released per the Form 8821?
2. When we say "designee" or "third party" can that be a firm or does it have to be the individuals named on the 2848/8821? For example, is it ok okay to send the notice to "PWC" in reference to taxpayer A or should it be to "John Smith POA at PWC" in reference to taxpayer A.

The answer to the first question is, yes, statutory notices of deficiency issued under IRC 6212 can and should be released per the taxpayer's authorization on a Form 8821. As you know, Form 8821 contains checkboxes in Line 2, under the name and address of the designees (up to two), whereby a taxpayer can check the boxes to request that the designee(s) "be sent copies of notices and communications." The Instructions to Form 8821 state (p.3):

If you want to authorize your designee to receive copies of **all** notices and communications sent to you by the IRS, you must check the box provided under the designee's name and address. You may not designate more than two designees on Form 8821 to receive copies of notices and communications sent to you by the IRS for the same matter(s). Do not check the box if you do not want copies of notices and communications sent to your designee(s).

There is nothing I know of that provides or suggests that a notice of deficiency (NOD) is an exception or is somehow excluded from a taxpayer's direction to the IRS to send copies of notices to designees. Further, even if the Line 2 box or boxes were not checked by a taxpayer, any of the designees listed on a Form 8821 can request and receive a copy of a NOD issued to the taxpayer because of the broad grant of authority conferred on the form, via Line 3 T(ax information): "Each designee is authorized to inspect and/or receive confidential tax information for the type of tax, forms, periods, and specific matters you list below." Both Lines 2 and 3 are, of course, limited to notices and communications and to other items of confidential tax information that are within the scope of what the taxpayer entered on Line 3 (e.g., if the

taxpayer listed on Line 3 “Form 1040,” “Income” (as the type of tax), and tax years “2018-2020,” then a NOD for the taxpayer’s 2019 individual income tax should be sent to the one or two designee(s) for which the boxes were checked on Line 2. Likewise, under the same facts, if the taxpayer or a designee separately requests that a copy of the NOD be sent or given to the designee, the request should be honored.

The reasoning above is consistent w/ the IRM subsection you referenced below, 11.3.3.5, specifically par. (3). And see also IRM 21.3.7.5(2) (stating, “Form 8821, *Tax Information Authorization*, or equivalent, can appoint any third party to receive and inspect account information for the tax matter(s) specified.”).

IRM 11.3.3 additionally includes an exhibit that I think is somewhat informative for purposes of your question, although it doesn’t explicitly include a NOD. IRM Exhibit 11.3.3-1 is the *Quick Guide to the Powers of Attorney and Tax Information Authorizations*. It’s a table w/ “Task[s]” and the various types of authorizations that a taxpayer can confer on a third party. Here’s an excerpt:

<b>Task</b>	<b>Checkbox Designee – This permission can coexist with power of attorney and tax information authorization</b>	<b>Tax Information Authorization Designee – Form 8821 (or equivalent) or oral consent tax information authorization</b>	<b>Power of Attorney who is Non-Credentialed (Unenrolled) Tax Return Preparer – Form 2848 (or equivalent) Note: See Rev. Proc. 2014-42 and IRM 13.1.23.4.5, Unenrolled Return Preparers and Annual Filing Season Program Participants</b>	<b>Power of Attorney who is Attorney, CPA, Enrolled Agent, Enrolled Actuary, Enrolled Retirement Plan Agent, Full-Time Employee, Officer, Student Attorney/Accountant, etc. - Form 2848 (or equivalent)</b>
*****	*****	*****	*****	*****
Be advised of a Balance Due	*****	Yes	*****	*****
*****	*****	*****	*****	*****

Receive information about taxpayer accounts		Yes		
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There is also a section in the IRS's procedural regulations (26 C.F.R. Part 601, Subpart E, Conference and Practice Requirements (reprinted as Pub. 216)) that, while specific to Forms 2848, seems equally relevant to Forms 8821. Section 601.506 (26 C.F.R.) states, in part:

**(a) General.** Any notice or other written communication (or a copy thereof) required or permitted to be given to a taxpayer in any matter before the Internal Revenue Service must be given to the taxpayer and, unless restricted by the taxpayer, to the representative according to the following procedures—

(1) If the taxpayer designates more than one recognized representative to receive notices and other written communications, it will be the practice of the Internal Revenue Service to give copies of such to two (but not more than two) individuals so designated. . . .

Lastly, I discussed the first question w/ an attorney in CC:PA's disclosure and privacy law practice group and w/ a Deputy Associate Chief Counsel for PA who probably knows as much or more as anyone in Counsel about stat notices, and both were in agreement w/ the proposed answer.

As to the second question, a taxpayer can designate an entity as their designee on Form 8821. See IRM 11.3.3.2(3) ("Permissible designees under this section include 'individuals; trusts; estates; corporations; partnerships; federal, state, local and foreign government agencies, or subunits of such agencies; or the general public' . . ."); IRM 11.3.3.2.1(3) ("An authorization for disclosure must contain all of the following items: . . . b. The identity of the person or **entity** to whom disclosure is to be made[.]"); IRM 11.3.3.1.4(1) (defining a "Designee" as "An individual, trust, estate, corporation, partnership, or **other third party entity** that has the written consent of a taxpayer . . . to receive specific tax information."). (Conversely, taxpayers can only appoint individuals as their representatives on Form 2848.)

According to a **Note** at the end of IRM 21.3.7.5.1(4) e.:

If a business entity is named as an designee authorized to receive tax information, this will include all employees of the named business entity and a list is not required. However, when a Form 8821 is submitted with a list of additional designees attached and line 2 is annotated "see attached list" then each designee on the attached listing shall be entered to the CAF database as requested. The designees on the attached listing are authorized only for the tax periods and forms listed on Line 3 of the submitted authorization. If line 2 is annotated and a listing is not attached, only load the business and do not reject for the additional list. If a list

of additional designees is attached and line 2 has not been annotated, process the business designee only and destroy the additional designee list as classified waste.

I spoke with W&I Accounts Management which oversees the CAF Units, and even if a list of a business designee is submitted w/ the Form 8821 appropriately annotated, each employee on the list will be recorded on the CAF, but only one CAF number is assigned and that's to the business entity. They're understanding of where notices and communications are sent depends on how the taxpayer has completed Line 2. In other words, in your example, if the designee is PWC, systemically-generated notices are sent to PWC at the address specified on the Form 8821. If the designee is John Smith at PWC's address, then the notice copy will be sent to John Smith at the business address. I would think Appeals, in sending copies of NODs, would follow suit – follow the terms of the Form 8821 designation(s).

I hope I've answered your questions. If not or if you have follow-on questions, please let me know.

Thanks,  
Stuart